

Message Text

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ACTION DLOS-09

INFO OCT-01 AF-10 ARA-14 EA-12 EUR-12 NEA-11 ISO-00
ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-04
SOE-02 DOE-15 FMC-02 TRSE-00 H-02 INR-10 INT-05
IO-14 JUSE-00 L-03 NSAE-00 NSC-05 NSF-02 OES-07
OMB-01 PA-02 PM-05 SP-02 SS-15 ICA-20 /212 W
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R 052033Z MAY 78
FM USMISSION GENEVA
TO SECSTATE WASHDC 9291

UNCLAS SECTION 01 OF 05 GENEVA 06889

PASS TREASURY FOR HAZEN GALE

E.O. 11652: N/A
TAGS: PLOS
SUBJECT: US FINANCIAL ARRANGEMENTS PROPOSAL

1. FOLLOWING IS THE TEXT OF THE US FINANCIAL
ARRANGEMENTS PROPOSAL TABLED MAY 3, 1978.

BEGIN TEXT:

(A) IN ADOPTING RULES, REGULATIONS AND PROCEDURES
CONCERNING THE FINANCIAL TERMS OF A PLAN OF WORK, THE
AUTHORITY SHALL BE GUIDED BY THE FOLLOWING OBJECTIVES:

(I) TO ENSURE OPTIMUM REVENUES FOR THE
AUTHORITY FROM THE PROCEEDS OF
COMMERCIAL EXPLOITATION;

(II) TO ATTRACT INVESTMENTS AND TECHNOLOGY
INTO THE EXPLORATION AND EXPLOITATION
OF THE AREA;

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(III) TO ENSURE EQUALITY OF FINANCIAL TREATMENT
AND COMPARABLE FINANCIAL OBLIGATIONS AMONG
ALL SEABED MINING OPERATIONS.

(B) A FEE SHALL BE LEVIED FOR THE ADMINISTRATIVE
COST OF PROCESSING AN APPLICATION FOR A PLAN OF WORK

AND SHALL BE FIXED AT AN AMOUNT OF 500,000 DOLS
PER APPLICANT.

(C) FINANCIAL CONTRIBUTIONS TO THE AUTHORITY SHALL
BE AS FOLLOWS:

(I) CONTRIBUTIONS SHALL BE MADE UP OF THE COST
OF PROSPECTING THE RESERVED SITE AS
SPECIFIED IN PARAGRAPH 5J(I), A PRODUCTION
CHARGE, AND A SHARE OF NET PROCEEDS OR
A SHARE OF GROSS REVENUES DEEMED TO REPRESENT
A SHARE OF NET PROCEEDS.

(II) THE AUTHORITY SHALL NOT ESTABLISH ANY FEES
OR CHARGES OTHER THAN THOSE DETERMINED
UNDER (C)(I) ABOVE AND THE FEE REFERRED TO
IN SUBPARAGRAPH (B) ABOVE.

(III) PAYMENT OF THE PRODUCTION CHARGE AND SHARE
OF NET PROCEEDS OR SHARE OF GROSS REVENUES
SHALL BE MADE UPON THE START OF COMMERCIAL
EXPLOITATION AND SHALL BE PAID AT THE END
OF EACH ACCOUNTING PERIOD OR AS MUTUALLY
AGREED BETWEEN THE OPERATOR AND THE
AUTHORITY. COMMERCIAL EXPLOITATION MEANS
ANY ACTIVITY ENGAGED IN AT SEA TO LIFT ANY
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HARD MINERAL RESOURCES AT A SUBSTANTIAL
RATE, WITHOUT REGARD TO PROFIT OR LOSS, FOR
THE PRIMARY PURPOSE OF MARKETING OR COMMERCIAL-
LY USING SUCH RESOURCE.

(IV) ALL COSTS AND REVENUES SHALL BE THE RESULT
OF A FREE MARKET TRANSACTION OR TAKE PLACE
AT ARM'S LENGTH. IF THE AUTHORITY BELIEVES
THAT THE COSTS AND REVENUES ARE NOT THE
RESULT OF FREE MARKET OR ARM'S LENGTH
TRANSACTIONS, THEY SHALL BE COMPUTED BY THE
AUTHORITY AS THOUGH THEY TOOK PLACE AT
ARM'S LENGTH OR WERE THE RESULT OF FREE
MARKET TRANSACTIONS. IN DETERMINING THE
VALUE OF ANY ARM'S LENGTH TRANSACTIONS OR
FREE MARKET TRANSACTIONS, THE AUTHORITY
SHALL USE THE VALUE OF A SIMILAR TRANSACTION
TAKING PLACE IN OTHER MARKETS WHERE FREE
MARKET FORCES OR ARM'S LENGTH TRANSACTIONS
HAVE PREVAILED.

(V) IN ORDER TO ENSURE THAT ALL COSTS AND
REVENUES ARE THE RESULT OF FREE MARKET

TRANSACTIONS OR TAKE PLACE AT ARM'S LENGTH
AND TO ENSURE ENFORCEMENT OF AND COMPLIANCE
WITH THE PROVISIONS OF THIS PARAGRAPH, THE
AUTHORITY SHALL ADOPT RULES AND REGULATIONS
SPECIFYING UNIFORM AND GENERALLY ACCEPTABLE
ACCOUNTING RULES AND PROCEDURES TO BE
FOLLOWED BY THE OPERATOR AND THE MEANS OF
SELECTION BY THE OPERATOR OF CERTIFIED
INDEPENDENT ACCOUNTANTS ACCEPTABLE TO THE
AUTHORITY FOR THE PURPOSE OF AUDITING
COMPLIANCE WITH SAID RULES AND REGULATIONS.
THE OPERATOR SHALL MAKE AVAILABLE TO THE
INDEPENDENT ACCOUNTANTS, IN ACCORDANCE WITH

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INFO OCT-01 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01
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NSF-02 OES-07 OMB-01 PA-02 PM-05 SP-02 SS-15
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PASS TREASURY FOR HAZEN GALE

RULES AND REGULATIONS, SUCH FINANCIAL DATA
AS ARE REQUIRED TO DETERMINE COMPLIANCE WITH
THIS PARAGRAPH. IN THE EVENT OF A DISPUTE
BETWEEN THE AUTHORITY AND AN OPERATOR OVER
THE FINANCIAL TERMS OF A PLAN OF WORK,
EITHER PARTY MAY REQUEST RESOLUTION OF THE
DISPUTE THROUGH COMPULSORY AND BINDING
COMMERCIAL ARBITRATION. IN ACCORDANCE WITH
ARTICLE 139, PARAGRAPH 1, STATES PARTIES
SHALL ENSURE THAT THEY, THEIR VENTURES, PERSONS
NATURAL OR JURIDICAL WHICH POSSESS THE
NATIONALITY OF STATES PARTIES OR ARE
EFFECTIVELY CONTROLLED BY THEM OR BY THEIR

NATIONALS SHALL COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH. NONCOMPLIANCE WITH THE PROVISIONS OF THIS SUBPARAGRAPH SHALL RENDER STATES PARTIES LIABLE IN ACCORDANCE WITH ARTICLE 139, PARAGRAPH 1 AND SHALL RENDER OPERATORS LIABLE IN ACCORDANCE WITH ANNEX 1, PARAGRAPHS (4) AND (12).

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(D) PRODUCTION CHARGE AND SHARE OF NET PROCEEDS OR SHARE OF GROSS REVENUES DEEMED TO REPRESENT A SHARE OF NET PROCEEDS:

(I) A PRODUCTION CHARGE IS EITHER OF THE FOLLOWING:

-- 3.75 PERCENT OF THE IMPUTED VALUE OF THE HARD MINERAL RESOURCES RECOVERED FOR SALE BY THE OPERATOR FROM THE DEEP SEABED. FOR THE PURPOSE OF THIS SECTION, SAID IMPUTED VALUE OF HARD MINERAL RESOURCES FOR A GIVEN ACCOUNTING PERIOD SHALL BE 1/5 OF THE PROCEEDS OF SALES OF THE METALS OR MINERALS FROM THE HARD MINERAL RESOURCES IN THE MOST BASIC FORM IN WHICH SUCH METALS OR MINERALS ARE CUSTOMARILY TRADED OR IN THE FOLLOWING FORMS:

(ALTERNATIVE LANGUAGE:

-- .75 PERCENT OF THE PROCEEDS OF SALES OF THE METALS OR MINERALS FROM THE HARD MINERAL RESOURCES IN THE MOST BASIC FORM IN WHICH SUCH METALS OR MINERALS ARE CUSTOMARILY TRADED OR IN THE FOLLOWING FORMS:)

FERRO-NICKEL, COBALT METAL 99 PERCENT PLUS, COPPER METAL REFINED, AND MANGANESE ORE, OR MANGANESE METAL. THE AVERAGE PRICE OF THE METALS OR MINERALS FROM THE HARD MINERAL RESOURCES SHALL BE PROVIDED BY AN

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INTERNATIONAL COMMODITY EXCHANGE OR THE AVERAGE VALUE OF IMPORTED METALS OR MINERALS

BY THE MAJOR IMPORTER OF SUCH METALS OR MINERALS.

-- 3.75 PERCENT OF THE MARKET VALUE OF THE DRY NODULES AT THE MINE SITE WHEN A FREE MARKET HAS BEEN ESTABLISHED.

IN ANY ACCOUNTING PERIOD, THE OPERATOR MAY CHOOSE TO PAY EITHER OF THE FOREGOING CHARGES IN D(II) WHEN A FREE MARKET FOR NODULES HAS BEEN ESTABLISHED.

(II) A SHARE OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION SHALL BE PAID TO THE AUTHORITY BY AN OPERATOR ACCORDING TO THE RATE OF RETURN ON INVESTMENT AS SET OUT BELOW.

A. PROCEEDS SHALL BE DEFINED AS THE GROSS REVENUES FROM THE SALE OF THE PROCESSED METALS AND MINERALS OR, IF THE AUTHORITY DETERMINES THAT A MARKET FOR NODULES EXISTS, THE OPERATOR MAY ELECT TO HAVE THE GROSS REVENUES DETERMINED BY THE PROCEEDS OF THE SALE OF SUCH NODULES; IN THIS CASE, ALL PROCEEDS AND COSTS OF COMMERCIAL EXPLOITATION SHALL BE CALCULATED IN PARAGRAPH C BELOW. PROCEEDS ALSO INCLUDE ANY REVENUES FROM THE DISPOSAL OF CAPITAL ASSETS LESS THE BOOK VALUE AT THE TIME OF DISPOSAL.

B. NET PROCEEDS OF THE TOTAL OPERATION SHALL BE DEFINED AS PROCEEDS, LESS OPERATING COSTS, LESS INVESTMENT RECOVERY. OPERATING COSTS FOR A GIVEN ACCOUNTING PERIOD SHALL BE DEDUCTIBLE IN THE ACCOUNTING PERIOD IN WHICH THEY OCCUR. ANY OPERATING LOSSES FROM PREVIOUS ACCOUNTING PERIODS SHALL ALSO BE CARRIED FORWARD

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AND BACKWARD AS SPECIFIED IN THE RULES AND REGULATIONS OF THE AUTHORITY.

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INFO OCT-01 ISO-00 ACDA-12 AGRE-00 AID-05 CEA-01
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C. NET PROCEEDS FROM COMMERCIAL EXPLOITATION FOR A GIVEN ACCOUNTING PERIOD SHALL BE DETERMINED BY THE RATIO OF THE DEVELOPMENT COSTS DIRECTLY ATTRIBUTABLE TO COMMERCIAL EXPLOITATION DIVIDED BY TOTAL DEVELOPMENT COSTS AND MULTIPLYING THAT RATIO BY THE NET PROCEEDS OF THE TOTAL OPERATION AS CALCULATED IN PARAGRAPH B ABOVE. THE RATIO SHALL BE RECALCULATED FOR EACH ACCOUNTING PERIOD.

D. THE COSTS INCURRED BY THE OPERATOR USED TO DETERMINE NET PROCEEDS IN RESPECT OF THOSE OPERATIONS SHALL COMPRISE THE FOLLOWING:

1. DEVELOPMENT COSTS: THAT IS, ALL EXPENDITURES INCURRED PRIOR TO THE COMMENCEMENT OF COMMERCIAL PRODUCTION INCLUDING, INTER ALIA, THE APPLICATION FEE, COSTS OF PROSPECTING THE RESERVED SITE SPECIFIED IN PARAGRAPH 5J(I), MACHINERY, EQUIPMENT, SHIPS, EXPLORATION AND FEASIBILITY STUDIES AND OTHER RESEARCH AND DEVELOPMENT, CONSTRUCTION, INTEREST EXPENSES PAID

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PRIOR TO THE START OF COMMERCIAL EXPLOITATION, REQUIRED LEASES, LICENSES, AND SUBSEQUENT TO THE COMMENCEMENT OF COMMERCIAL PRODUCTION, SIMILAR COSTS REQUIRED FOR THE REPLACEMENT OF EQUIPMENT AND MACHINERY, MAINTENANCE AND IMPROVEMENT OF PRODUCTIVE CAPACITY LESS PROCEEDS FROM THE DISPOSAL OF CAPITAL ASSETS;

2. OPERATING COSTS: THAT IS, ALL EXPENDITURES INCURRED IN THE COMMERCIAL OPERATION

INCLUDING, INTER ALIA, THE PRODUCTION CHARGE, EXPENDITURES FOR WAGES, SALARIES, EMPLOYEE BENEFITS, PAYROLL TAXES, TAXES ON ASSETS, SALES TAXES AND CUSTOMS DUTIES ON THE EQUIPMENT, SUPPLIERS, MATERIALS, SERVICES TRANSPORTATION, SALE OF PRODUCTS, UTILITIES, PURCHASES, AND OVERHEAD AND ADMINISTRATIVE COSTS SPECIFICALLY RELATED TO OPERATIONS OF THE PLAN OF WORK, FROM PRIOR ACCOUNTING PERIODS, AND CAPITAL LOSSES INCURRED DURING THE RELEVANT ACCOUNTING PERIOD.

E. INVESTMENT RECOVERY SHALL BE DEFINED AS A DEPRECIATION CHARGE ON SUCH PERCENTAGE BASIS PER ANNUM AS DETERMINED BY RULES AND REGULATIONS OF THE AUTHORITY. THE RULES AND REGULATIONS SHALL PROVIDE FOR COMPLETE RECOVERY OF EXPENSES CLASSIFIED AS QUOTE DEVELOPMENTAL COSTS UNQUOTE WITHIN FIVE FULL ACCOUNTING PERIODS FOLLOWING THE COMMENCEMENT OF COMMERCIAL EXPLOITATION.

F. IN EACH YEAR, THE SHARE OF NET PROCEEDS TO UNCLASSIFIED

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BE RECEIVED BY THE AUTHORITY SHALL BE DETERMINED ACCORDING TO THE RATE OF RETURN ON THE OPERATOR'S INVESTMENT FOR COMMERCIAL EXPLOITATION. THE RATE OF RETURN ON THE OPERATOR'S INVESTMENT SHALL BE CALCULATED BY DIVIDING THE SUM OF THE OPERATOR'S PORTIONS OF THE NET PROCEEDS FROM COMMERCIAL EXPLOITATION IN ALL PRECEDING ACCOUNTING PERIODS BY THE TOTAL NUMBER OF COMPLETED ACCOUNTING PERIODS FROM THE DATE OF COMMENCEMENT OF COMMERCIAL EXPLOITATION, AND EXPRESSING THIS AVERAGE AS A PERCENTAGE OF DEVELOPMENT COSTS DIRECTLY ATTRIBUTABLE TO COMMERCIAL EXPLOITATION. THE COSTS AND PROCEEDS FIGURES USED TO CALCULATE THE RATE OF RETURN ON THE OPERATOR'S INVESTMENT SHALL BE EXPRESSED IN CONSTANT TERMS.

G. THE NET PROCEEDS OF COMMERCIAL EXPLOITATION SHALL BE ALLOCATED ON AN INCREMENTAL BASIS AMONG THE THREE INCREMENTS, IF APPLICABLE, SPECIFIED BELOW:

-- THE INCREMENT OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION WHICH REPRESENTS A RATE OF RETURN ON INVESTMENT OF 10 PERCENT OR LESS SHALL BE REFERRED TO AS QUOTE MINIMAL UNQUOTE;

-- THE INCREMENT OF NET PROCEEDS FROM COMMERCIAL EXPLOITATION WHICH REPRESENTS A RATE OF RETURN ON

INVESTMENT LARGER THAN 10 PERCENT BUT EQUAL OR LESS THAN
20 PERCENT SHALL BE REFERRED TO AS QUOTE LOW UNQUOTE;
-- THE INCREMENT OF NET PROCEEDS FROM COMMERCIAL
EXPLOITATION WHICH REPRESENTS A RATE OF RETURN ON
INVESTMENT GREATER THAN 20 PERCENT BUT EQUAL OR LESS
THAN 25 PERCENT SHALL BE REFERRED TO AS QUOTE MEDIUM
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-- THE INCREMENT OF NET PROCEEDS FROM COMMERCIAL
EXPLOITATION WHICH REPRESENTS A RATE OF RETURN ON
INVESTMENT GREATER THAN 25 PERCENT SHALL BE
REFERRED TO AS QUOTE HIGH UNQUOTE.

H. THE AUTHORITY SHALL BE ENTITLED TO A SHARE OF
THE NET PROCEEDS OF COMMERCIAL EXPLOITATION APPLIED
ON AN INCREMENTAL BASIS ACCORDING TO THE RATE
SPECIFIED BELOW:

-- WHEN THE STATUS IS QUOTE MINIMAL UNQUOTE THE
AUTHORITY SHALL NOT RECEIVE A PORTION OF NET
PROCEEDS. (SEE FOOTNOTE.)

-- THE AMOUNT OF NET PROCEEDS OF
COMMERCIAL EXPLOITATION IN THE INCREMENT QUOTE LOW
UNQUOTE SHALL BE SHARED WITH THE AUTHORITY AT A RATE
OF 50 PERCENT;

-- THE AMOUNT OF NET PROCEEDS OF COMMERCIAL

EXPLOITATION IN THE INCREMENT QUOTE MEDIUM UNQUOTE
SHALL BE SHARED WITH THE AUTHORITY AT A RATE OF
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60 PERCENT;

-- THE AMOUNT OF NET PROCEEDS OF COMMERCIAL
EXPLOITATION IN THE INCREMENT QUOTE HIGH UNQUOTE
SHALL BE SHARED WITH THE AUTHORITY AT A RATE OF 75
PERCENT.

(IV) A. THE OPERATOR MAY ELECT, PRIOR TO APPROVAL
OF THE PLAN OF WORK, TO PAY TO THE AUTHORITY A SHARE
OF GROSS REVENUES DEEMED TO REPRESENT A SHARE OF NET

--

FOOTNOTE: INSTEAD OF HAVING A QUOTE MINIMAL UNQUOTE
STATUS WITH NO PAYMENT TO THE AUTHORITY, THE PRODUCTION
CHARGE COULD BE CREDITED AGAINST THE AUTHORITY'S
SHARE OF NET PROCEEDS.

PROCEEDS FROM COMMERCIAL EXPLOITATION AS STIPULATED
UNDER THE METHOD SET OUT IN LITRA (II) OF THIS
SUBPARAGRAPH. THE SHARE OF GROSS REVENUES SHALL BE
MUTUALLY AGREED BETWEEN THE AUTHORITY AND THE
OPERATOR.

B. FOR THE PURPOSE OF A ABOVE, GROSS REVENUES
DERIVED FROM COMMERCIAL EXPLOITATION SHALL BE DEFINED
AS 20 PERCENT OF THE MARKET VALUE OF METALS OR MINERALS
TO BE PROCESSED FOR SALE CONTAINED IN THE NODULES
RECOVERED FROM THE SITE.

C. IN THE EVENT A PLAN OF WORK CALLING FOR THE
PAYMENT OF A SHARE OF GROSS REVENUES DEEMED TO
REPRESENT A SHARE OF NET PROCEEDS IS CONCLUDED, ALL
OTHER OPERATORS THEN OPERATING PURSUANT TO PREVIOUS
PLANS OF WORK, WHETHER THEIR FINANCIAL ARRANGEMENTS
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CALL FOR A SHARE OF NET PROCEEDS OR A SHARE OF GROSS
REVENUES, SHALL BE ENTITLED TO ELECT TO MAKE PAYMENTS
OF A SHARE OF GROSS REVENUES AT IDENTICAL RATES AS
THOSE CALLED FOR IN THE SAID PLAN OF WORK. NOTICE
OF SUCH ELECTION MAY BE GIVEN AT ANY TIME TO THE
AUTHORITY WITHIN TWO YEARS FROM THE DATE THAT SAID
PLAN OF WORK HAS BEEN APPROVED BY THE AUTHORITY AND

HAS BEEN ANNOUNCED. PAYMENTS UNDER SUCH AN ELECTION SHALL BE MADE RELATIVE TO THE FIRST FULL ACCOUNTING PERIOD BEGINNING AFTER THE ELECTION.

(E)(I) THE AMOUNTS REFERRED TO IN SUBPARAGRAPH (B) MAY BE REVISED EVERY FIVE YEARS THROUGH RULES AND REGULATIONS TO ADJUST FOR INFLATION. ONCE A PLAN OF WORK HAS BEEN SUBMITTED OR APPROVED, THE AMOUNTS REFERRED TO IN SUBPARAGRAPH (B) SHALL NOT BE INCREASED.

(II) THE PAYMENTS TO THE AUTHORITY UNDER (II), (III) AND (IV) OF SUBPARAGRAPH (D) ABOVE MAY BE MADE EITHER IN A CURRENCY AGREED UPON BETWEEN THE AUTHORITY AND THE OPERATOR, OR IN THE EQUIVALENTS OF PROCESSED METALS AT CURRENT MARKET VALUE. THE MARKET VALUE SHALL BE ASCERTAINED IN ACCORDANCE WITH (II) OF SUBPARAGRAPH (D) ABOVE.

END TEXT.

2. COMMENT: USING EXECUTIVE SUMMARY OF MIT MODEL, THE FOLLOWING ROUGH ESTIMATES OF REVENUES AVAILABLE TO THE AUTHORITY WERE PRESENTED TO KOH GROUP EXPERTS:

-- BANKED SITE: COST OF THIS FRONT IN-KIND BONUS TO THE AUTHORITY COULD VARY FROM PROJECT TO PROJECT.

-- ROYALTY OF 3.75 PERCENT OF IMPUTED VALUE:
APPROXIMATELY 2 MIL DOLS PER YEAR STARTING IN THE SIXTH
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YEAR OF THE PROJECT.

-- PROFIT SHARING: STARTING IN 11TH YEAR AFTER
OPERATION HAS RECOVERED INITIAL DEVELOPMENT COSTS:
QUOTE LOW UNQUOTE INCREMENT; 5.5 MILLION DOLS
PER YEAR;

QUOTE MEDIUM UNQUOTE INCREMENT; 3.0 MILLION
DOLS PER YEAR.

THEREFORE IN FIRST FIVE YEARS OF COMMERCIAL EXPLOITATION
AUTHORITY RECEIVES 2 MILLION DOLS/YEAR. STARTING IN THE
6TH YEAR OF COMMERCIAL EXPLOITATION AUTHORITY ALSO
RECEIVES ABOUT 8.5 MILLION/YEAR IN PROFIT SHARING.
PLEASE PASS THIS CABLE TO JIM SEBENIOUS ASAP'
RICHARDSON

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Review Exemptions: n/a
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Review Release Date: N/A
Review Release Event: n/a
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To: STATE
Type: TE
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